

section 37(d) and (da) of the Act are therefore rebutted and the accused is entitled to an acquittal.

I would stress that I have arrived at this conclusion, even without the affidavits, D 19 and D 20. With these affidavits, which I accept as being reasonably probable, having regard to my findings of fact aforesaid, the case for the defence becomes overwhelming and convincing and more than sufficient to rebut the presumptions.

In all the circumstances, I am thoroughly convinced that the accused is entitled to a verdict of not guilty and I accordingly acquit and discharge him.

Accused acquitted and discharged.

Solicitors: *R. Rajasingam & Co.; Ram, Rais & Yap.*

KARAM SINGH VERIAH v. KARPAL SINGH

[O.C.J. (Harun J.) December 17, 1986]

[Kuala Lumpur — Application No. A32-45-86]

Civil Procedure — Contempt of court — Order for committal — When application should have been made — Federal Constitution, art. 126 — Courts of Judicature Act 1964, s. 13(2).

Legal Profession — Advocate and solicitor — Application for order of committal for contempt of court against applicant dismissed.

Both the applicant and respondent are advocates and solicitors of the High Court in Malaya. The applicant applied for an order of committal against the respondent for contempt of court.

Habeas corpus proceedings on behalf of 27 detainees arising out of the Memali incident had been instituted in the High Court at Alor Star. These applications were heard before Mustapha Hussain J. on various dates in December 1985 to March 1986 and were adjourned for continued hearing on June 7, 1986.

On May 11, 1986 the Attorney-General filed a notice of motion to disqualify Mustapha Hussain J. from further hearing the applications on the grounds of bias. At the hearing of the application to disqualify the judge, the respondent informed the court that he was holding a watching brief for the Democratic Action Party (DAP). The respondent urged Mustapha Hussain J. to grant leave for contempt proceedings to be commenced against the Senior Federal Counsel.

The applicant contended that the respondent's representation to the court that he was holding a watching brief

A for DAP was false. Further, he had made uncalled for statements and attacks on the learned Senior Federal Counsel, championing the judiciary under false pretences and generally had interfered with court proceedings which were not his business. These acts, according to the applicant, amounted to a contempt of court.

B Held, dismissing the application: (1) the alleged contempt, if any, occurred before Mustapha Hussain J. in the High Court at Alor Star. That court has full powers to deal with contempt of itself. The application for leave should be made there;

(2) as far as the alleged remarks against the learned Senior Federal Counsel were concerned, it was for the Attorney-General to take whatever steps he deemed appropriate.

APPLICATION.

Applicant in person.

Respondent in person.

Cur. Adv. Vult.

Harun J.: This was an application for leave to apply for an order of committal against the respondent for contempt of court. Both the applicant and the respondent are advocates and solicitors of the High Court in Malaya.

Habeas corpus proceedings on behalf of 27 detainees arising out of the Memali incident had been instituted in the High Court at Alor Star. These applications were heard before Mr. Justice Mustapha on various dates in December 1985 to March 1986 and was adjourned for continued hearing on June 7, 1986.

On May 11, 1986, the Attorney-General filed a notice of motion to disqualify Mr. Justice Mustapha from further hearing the applications on the grounds of bias. At the hearing of the application to disqualify the judge, the respondent informed the court that he was holding a watching brief for the Democratic Action Party (DAP). During the course of that hearing, the respondent urged Mr. Justice Mustapha to grant leave for contempt proceedings to be commenced against the learned Senior Federal Counsel who appeared on behalf of the Attorney-General, arising out of the several statements he made in his affidavit concerning the learned judge in support of the application to disqualify. Mr. Justice Mustapha said he would give a decision later whether or not there was a contempt of court.

The applicant contends that the respondent's representation to the court that he was holding a watching brief for the DAP is false as the DAP is

not a party to the *habeas corpus* proceedings. Further, he had made uncalled for statements and attacks on the learned Senior Federal Counsel, championing the judiciary under false pretences and generally had interfered with court proceedings which were not his business. These acts of the respondent, according to the applicant, amount to a contempt of court.

I found that the alleged contempt of court, if any, occurred before Mr. Justice Mustapha in the High Court at Alor Star. That court has full powers to deal with contempt of itself – article 126 of the Federal Constitution; section 13(2) of the Courts of Judicature Act 1964. I accordingly held that the application for leave should be made there. As far as the alleged remarks against the learned Senior Federal Counsel are concerned, it is for the Attorney-General to take whatever steps he deems appropriate. In the event, I dismissed the application with costs as the respondent was served.

Order accordingly.

Solicitors: *Karam Singh Veriah & Co.; Karpal Singh & Co.*

**CAXTON (KELANG) SDN. BHD. v.
SUSAN JOAN LABROOY & ANOR.**

[O.C.J. (Siti Norma Yaakob J.) December 12, 1986]

[Kuala Lumpur – Originating Summons No. F1680
of 1985]

Land Law – Sale and purchase of property – Sale and purchase of shares – Whether the two agreements dependent on each other – Whether plaintiff has right to sue – Whether premises have been effectively decontrolled.

Landlord and Tenant – Rent control – Whether premises have been effectively decontrolled – Whether certificate of the Rent Tribunal valid – Rent Control Act 1966, s. 23.

In the present case, the plaintiff was in occupation of certain premises, the freehold title of which were in the joint names of the defendants. The shareholdings of the plaintiff were, however, owned by the defendants. On July 5, 1984 all the four shareholders of the plaintiff sold their equitable interests to two persons, namely, Joseph De Silva and Tan Boon Lai who were directors of the plaintiff. The sale of the shares was also subject to a specific covenant on the part of the four vendors to allow the plaintiff to occupy the premises for an indefinite period at a normal rental of \$300 per month (clause 6(e)).

A On December 14, 1984, the defendants entered into a sale and purchase agreement of the premises with De Silva and Tan. However, the agreement fell through because the purchasers were unable to pay the purchase money.

In the present case, the plaintiff sought two declaratory orders, namely:

- B (1) upon the true construction of clause 6 (e) of an agreement dated July 5, 1984, it was entitled to occupy No. 20, Jalan Station, Kelang ("the premises") as a tenant of the defendants at a monthly rental of \$300 until such tenancy has been lawfully terminated and that the defendants were estopped from contending otherwise
- C (2) for so long as the tenancy is in existence, the defendant had no right to re-enter or repossess the premises other than in proceedings under the Control of Rent Act 1966 as the premises was rent-controlled.

D The defendants contended that the failure on the part of the two purchasers to complete the purchase of the freehold title disentitles the plaintiff to claim a tenancy under clause 6(e) of the first agreement as both agreements were executed concurrently. The defendants also argued that the plaintiff has no right to sue on the agreement and that under clause 6(e) they had only a licence to occupy the premises. The plaintiff also disputed the validity of the certificate of the Rent Tribunal under which the premises were purportedly decontrolled.

E **Held**, granting the declarations: (1) the two agreements were not in any way concurrent to each other. They existed quite independent of each other;

(2) common intention could not be imputed in the present case where there was no evidence to that effect. Moreover, this would be contrary to sections 91 and 92 of the Evidence Act 1950;

F (3) in the present case, the plaintiff was not suing on the agreement as such but was trying to establish a right given to it under the agreement and to that extent sought a declaration that it was a tenant of the defendants;

G (4) clause 6(e) had not altered the status of the plaintiff to that of a licensee. On the contrary, by virtue of section 115 of the Evidence Act 1950, the defendants are estopped from denying otherwise;

(5) the premises have not been effectively decontrolled. Therefore the defendants have no right to re-enter or repossess the premises otherwise than pursuant to the Control of Rent Act 1966.

H

ORIGINATING SUMMONS.

Murthi for the plaintiff.

A.J. Dason for the defendants.

I

Cur. Adv. Vult.

Siti Norma Yaakob J.: In this suit, the plaintiff, a company dealing in the business of printing press and the sale of stationeries, seeks two declaratory orders, namely: